



## INTERIOR BOARD OF INDIAN APPEALS

Margie A. Small v. Acting Billings Area Director, Bureau of Indian Affairs

23 IBIA 112 (12/17/1992)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

MARGIE A. SMALL,  
Appellant

v.

ACTING BILLINGS AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Docketing and Dismissing  
: Appeal  
:  
:  
: Docket No. IBIA 93-30-A  
:  
:  
: December 17, 1992

On December 17, 1992, the Board of Indian Appeals (Board) received a notice of appeal from Margie A. Small (appellant). Appellant seeks review of a September 18, 1992, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director), cancelling Lease No. 101799 on the Wind River Reservation, for failure to pay rent.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that the appeal be dismissed.

The Area Director's decision concluded:

This decision may be appealed to the Interior Board of Indian Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340. Your notice of appeal to the Board must be signed by you or your attorney and must be mailed within 30 days of the date you receive this decision. \* \* \* You must send copies of your notice of appeal to (1) the Assistant Secretary - Indian Affairs, 4140 MIB, U.S. Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20240, (2) each interested party known to you, and (3) this office. Your notice of appeal sent to the Board of Indian Appeals must certify that you have sent copies to these parties. \* \* \*

If no appeal is timely filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal. [Emphasis in original.]

Appellant filed a notice of appeal with the Area Director. By letter dated December 1, 1992, the Area Director informed appellant that he had received her notice of appeal dated October 8, 1992 (probably should be November 8, 1992), with a postmark of November 14, 1992. The Area Director

noted that his use of an incorrect address for appellant had resulted in her not receiving the decision until October 9, 1992. Even using this date of receipt, the Area Director found that appellant's appeal period expired on November 9, 1992, and her notice of appeal was not timely because it was not postmarked until November 14, 1992. The Area Director concluded that his September 18, 1992, decision was final.

Appellant filed a notice of appeal with the Board. The appeal is dated December 10, 1992, and was postmarked December 12, 1992. Appellant contends that the Area Director's September 18, 1992, decision did not mention sending the appeal to the Board in Arlington, but instead said it was to be filed in Washington, D.C.

Appellant has failed to file a timely notice of appeal. Despite appellant's assertion to the contrary, the Area Director's decision clearly informed her that the notice of appeal was to be filed with the Board, and provided the Board's proper mailing address. Appellant chose, however, to file her notice of appeal with the Area Director. The Board has consistently held that a notice of appeal is not timely when the appellant has been given the correct appeal information but files his/her notice of appeal with an official other than the Board, resulting in receipt of the notice of appeal by the Board outside the period specified in the regulations. E.g., Butler v. Acting Portland Area Director, 22 IBIA 186 (1992), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Billings Area Director's September 18, 1992, decision is dismissed as not being timely filed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge